IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
August 6, 2009 Session

CARLTON B. PARKS v. CITY OF CHATTANOOGA

Appeal from the Chancery Court for Hamilton County
No. 07-0186 Howell N. Peoples, Chancellor

No. E2009-00373-COA-R3-CV - FILED OCTOBER 28, 2009

This is the fourth lawsuit Carlton B. Parks ("the plaintiff") has filed against the City of Chattanooga ("the defendant") seeking redress for what he perceives to be his wrongful termination from employment as a police officer after he was accused of sexual assault, a charge for which he was later indicted. The criminal charges were subsequently dismissed, but the defendant refused to reinstate him. The first two actions by the plaintiff were filed in federal district court; each resulted in a summary judgment of dismissal. The third suit was filed in Hamilton County Circuit Court. It was dismissed on the ground that all claims were precluded by the prior cases. We affirmed the circuit court's decision. The present case, filed in chancery court, was partially dismissed as barred by the statute of limitations. The plaintiff later amended his complaint to include claims seeking an injunction and writ of mandamus. The plaintiff's complaint, as amended, was dismissed by the trial court as barred by the previous lawsuits. The plaintiff appeals. We affirm.

Tenn. R. App. P. 3, Appeal as of Right; Judgment of the Chancery Court Affirmed; Case Remanded

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Carlton B. Parks, appellant, Pro se.

Crystal R. Freiberg and Phillip A. Noblett, Chattanooga, Tennessee, for the appellee, City of Chattanooga.

OPINION

I.

For ten years, the plaintiff has devoted himself to litigating claims against the defendant and others arising out of the termination of his employment with the Chattanooga police force. Three times before he has lost at the trial level and on appeal. The saga is well documented in ***Parks v. City of Chattanooga***, No. E2006-00617-COA-R3-CV, 2007 WL 27122 (Tenn. Ct. App., E.S., filed

Jan. 4, 2007) (***Parks III***), *perm. app. denied June 18, 2007*. The plaintiff appears to believe that he can file the same exact lawsuit over and over again, hoping to someday win what he has always lost. Accordingly, in each new case, he adds or subtracts some component or theory or party to give his lawsuit a sort of make-over. The "new face" approach applies to the present case. Construing the pleadings in the best light for the plaintiff, he espouses (1) the theory that under the defendants' city charter he had an absolute right to reinstatement once he was cleared of the criminal charges, (2) the theory that his right to reinstatement did not accrue until he was cleared of all criminal charges by a decision of the Court of Criminal Appeals on April 24, 2001, and, (3) the theory that he can force his reinstatement through an injunction or writ of mandamus.

Despite the arguably new theories, the operative facts remain the same. We will provide them in abbreviated form. In 1998, the plaintiff was a police officer in good standing in his 11th year with the City of Chattanooga police department. Then, on January 21, 1998, he met 18-year old Lashundra Brown. According to the plaintiff, Ms. Brown appeared in her nightgown and seductively lured him into her apartment where he did nothing but talk to her about someone he suspected of a crime. According to her, he entered her apartment uninvited and, when she resisted his advances, he physically overcame her. Ms. Brown said the plaintiff stopped short of the act of forced intercourse only because he received a call on his police radio. By all accounts, Ms. Brown was able to later positively identify the plaintiff's underwear; the plaintiff had an "explanation" for why she would know the color and pattern on his boxer shorts. When Ms. Brown's allegations first came to light, the defendant immediately suspended the plaintiff, and then, after an internal investigation, fired him effective March, 13, 1998. The plaintiff was indicted on various charges, but it was a she-said, he-said, case. When Ms. Brown's credibility came into question, the prosecutor asked the criminal court to dismiss the criminal charges without prejudice, but the court entered a dismissal with prejudice. The prosecutor later asked the criminal court to reinstate the criminal charges. The court complied with the prosecutor's request. In an extraordinary appeal, the Court of Criminal Appeals held that the criminal charges could not be reinstated, effectively terminating the prosecution of the plaintiff. ***State v. Parks***, E2000-00145-CDA-R10-CD, 2001 WL 416738 (Tenn. Crim. App. E.S., filed April 24, 2001).

The present complaint, much like the previous complaints[1], alleges that the defendant was out to get the plaintiff, and that the defendant hid exculpatory evidence, edited audio tapes and manufactured evidence through manipulation of Ms. Brown's story. The new component of this case, if any, is found in paragraphs 1 and 54 through 56 which read, in pertinent part, as follows:

> 1. . . . This action is to address the non-compliance of municipal charter, codes, and ordinances under Title 13 Chapter III Tenure, Sections 13.44-13.50. TCA §§ 28-3-109(a)(3) and 47-50-109 also addresses employment contract rights. The City refused to reinstate

[1] Our description of the allegations at issue in *Parks III* is informative and shows that the complaint in that case included "allegations that the defendants altered documents and audio cassette tapes, concealed evidence, and fabricated evidence" and "that he 'had a property right' in his tenured employment with the City." 2007 WL 27122 at 5.

Petitioner-Plaintiff after criminal charges were dismissed with prejudice and the Administrative charges were proven false and without merit.

* * *

54. Pursuant to the Chattanooga City Charter Code Title 13 Chapter III Tenure, Section 13.44 all firemen and policemen shall have safe tenure on their jobs. Section 13.44 specifically states:

> All firemen and policemen of the City of Chattanooga shall have safe tenure on their jobs so long as they properly and efficiently fulfill the duties of their respective positions. They shall not be discharged, or suspended for political or religious reasons or for any other unjust or arbitrary cause. This Act . . . shall apply to all firemen and policemen of the City of Chattanooga serving as of the effective date of this Act . . . provided, however, that this Act . . . shall apply only to those firemen and policemen who have been employed for more than one year.

55. On June 17, 1998, Parks defeated the City's multiple theories at the unemployment office based upon the alleged Administrative charges. Also, on September 08, 1998 and on April 24, 2001, the three (3) criminal charges were dismissed with prejudice in a court of law. Safe tenure was applicable as it related to Carlton B. Parks's employment reinstatement to his position with back-pay.

56. Pursuant to City of Chattanooga Carter Code - Ordinance Section 2-185 (c). . . the City could have and chose to terminate Parks employment [for committing a felony].

However, [p]ursuant to Chattanooga City Charter Title 13 Chapter III Tenure, Section 13.49, the City of Chattanooga was mandated to reinstate Carlton B. Parks which states in relevant part:

> Any and all employees discharged, or suspended in the event that such employee or employees are proven innocent of said charges by the committee or any other courts will be reinstated at his position he held when charges were made, with full retroactive pay for the time lost.

The complaint demands various forms of relief including complete reinstatement with back pay.

The defendant filed a motion to dismiss the complaint on the ground that the claims were barred by the statute of limitations. The trial court agreed, and dismissed all claims for money damages. The court viewed the defendant's motion as not addressing claims that the City Charter required reinstatement, and reserved ruling on any such claims. In the meantime, between the time the defendant filed its motion to dismiss and the court ruled on that motion, the plaintiff filed a "Request for Permanent Injunctive Relief or a Writ of Mandamus." Shortly after the trial court filed its order of partial dismissal, the plaintiff filed a motion asking the trial court to alter or amend or clarify its order of dismissal. His primary argument was that the defendant had conceded the right to reinstatement by not addressing the request for reinstatement in its motion to dismiss. The court clarified its previous order by noting that the plaintiff had filed the request for injunctive relief as a sort of amended pleading without obtaining leave of court and that the amendment was not properly before the court for disposition. The defendant then filed its answer to all remaining claims and raised, as an affirmative defense, claim preclusion. The court eventually granted the plaintiff leave to amend his pleadings to include the claims for injunctive relief and mandamus. The defendant moved for summary judgment on the ground that all claims were precluded by *res judicata*. When the motion first came before the court for disposition, the plaintiff had not responded to the defendant's statement of undisputed facts, and, as a consequence of this, the trial court granted an extension of time. The plaintiff's response did not directly respond to the facts listed as undisputed by the defendant, but argued that exceptions, including the "formal barrier" exception, to the doctrine of claim preclusion saved his claims. The trial court set the motion for oral argument, but cancelled the argument and later granted summary judgment without argument holding that all claims were precluded by the previous cases.

II.

The plaintiff filed this timely appeal and asks us to address issues, as restated by us as follows:

> Whether the trial court erred in not holding that the defendant conceded the plaintiff's right to reinstatement by injunction or mandamus by not addressing those claims in its motion to dismiss.
>
> Whether the trial court erred in finding that the breach of contract claims were barred by the statue of limitations.
>
> Whether the trial court erred in granting summary judgment without oral argument.
>
> Whether the plaintiff's claims fall within exceptions to the doctrine of *res judicata*.

> Whether there were genuine issues of material fact that should have defeated the motion for summary judgment.

III.

We need look no further than our own opinion in ***Parks III*** for the disposition of this case. As in ***Parks III***, the dispositive issue is whether the claims are barred by the doctrine of claim preclusion as a component of the doctrine of *res judicata*. *See* ***Parks III***, 2007 WL 27122 at * 6, (*citing* ***Smith Mechanical Contractors v. Premier Hotel Development***, 210 S.W.3d 557 (Tenn. Ct. App. 2006)). A dismissal by summary judgment on the grounds of *res judicata* involves a question of law and is reviewed by us *de novo* with no presumption of correctness. ***Smith Mechanical***, 210 S.W.3d at 563. "[Res judicata] bars a second [and, we would add, certainly a fourth] suit between the same parties or their privies on the same cause of action with respect to all the issues which were or could have been litigated in the former suit." ***Parks III***, 2007 WL 27122 at *7, *citing* ***Richardson v. Tennessee Bd. of Dentistry***, 913 S.W.2d 446, 459 (Tenn. 1995).

The plaintiff argues that this case fits within exceptions to the doctrine of *res judicata*, primarily that there was a "formal barrier" to litigating his claims in the prior cases and that the federal courts never had or exercised jurisdiction over his state law claims.[2] This same argument was made and rejected in ***Parks III*** as follows:

> The state law claims asserted in the present case certainly could have been asserted in the previous two lawsuits and they would have been decided by the federal district court given that the federal district court exercised its supplemental jurisdiction in both cases and did not decline to decide any of the state law issues. The state law claims in the previous lawsuits were given the federal district court's full attention and were decided on the merits. The federal district court had the power to afford the plaintiff the full relief sought by him in those previous cases and could have done so had the previous lawsuits contained the present state law claims. Therefore, there was no "formal barrier" preventing the plaintiff from bringing all of his claims together. The final judgments on the merits in the first two cases were rendered by a court of competent jurisdiction and involved the same defendants that are sued in the present case. All of the claims asserted in all three lawsuits arise out of the same series of events. We conclude that the claims in the present case fall squarely within the claim preclusion doctrine. Therefore, the trial court

[2]The plaintiff makes it abundantly clear that his previous lawsuits all included claims for reinstatement. At page 30 of his brief, the plaintiff specifically argues that the reinstatement claim was asserted but not addressed in the previous cases. But his argument misses the point of our holding in ***Parks III*** that "final judgments on the merits" disposed of all claims that were made or could have been made.

> correctly dismissed the present case because the claims are barred by the doctrine of *res judicata*.

2007 WL 27122 at *8. Arguably the trial court's order in the present case dismissing the remaining claims was not intended to apply to the monetary claims the court had previously dismissed as barred by the statute of limitations, but the rationale of *res judicata* applies with equal force to all claims, including monetary claims, made in this fourth action. We hold that the doctrine of *res judicata* barred all claims the plaintiff has tried to assert in this case.

Accordingly, we will follow our own advice in ***Parks III*** and not reach the plaintiff's issues that are rendered moot by our holding that all claims are precluded by the doctrine of *res judicata*. We will, briefly, address the argument that the trial court erred in cancelling the hearing on the defendant's motion for summary judgment and granting the motion without oral argument. We note that the trial court stated in its final order that "[t]he parties agreed to forego oral argument on this matter, and instead rely entirely upon their briefs." The plaintiff, however, asserts that the court's statement is wrong, and the defendant admits in its brief that "the December 10, 2008, oral argument was cancelled by the court." We are inclined to believe that in light of the previous continuance granted to allow the plaintiff to respond to the defendant's statement of undisputed facts, and what appear to be some scheduling problems, the trial court mistakenly believed that the parties agreed to waive argument. However, regardless of the reason, and assuming, purely for the purpose of discussion, that it was error for the trial court to decide the motion without permitting oral argument, we must consider whether any such error was harmful or harmless. Under Tenn. R. App. P. 36 (b), we are directed not to set aside a final judgment "unless, considering the whole record, error involving a substantial right more probably than not affected the judgment or would result in prejudice to the judicial process."

We can wholeheartedly, without hesitation, declare that oral argument would not and should not have affected the trial court's judgment. This is especially true given that our review is *de novo* and the plaintiff had the same opportunity to convince us that he arguably missed before the trial court. Oral argument could not have altered the fact that the plaintiff has previously sued and lost his case on the merits in the trial court and on appeal on the same set of operative facts. The plaintiff did not dispute the facts set forth by the defendant as material to the motion. Nor is there any room to believe that the denial of oral argument on the one motion represents a prejudicial breakdown in the judicial process. The plaintiff has had his issues presented to the court, for the fourth time now. We hold that, even assuming the court committed error in failing to entertain oral argument on the defendant's motion for summary judgment, such "error" was harmless in nature.

IV.

The judgment of the trial court is affirmed. Costs on appeal are taxed to the appellant, Carlton B. Parks. The case is remanded, pursuant to applicable law, for collection of costs assessed below.

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CHARLES D. SUSANO, JR., JUDGE